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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LUTHER HERMAN JOHNSON,

Defendant and Appellant.

B221508

(Los Angeles County
Super. Ct. No. BA358270)

THE COURT:*

Luther Herman Johnson appeals from the judgment entered following his conviction by jury of robbery (Pen. Code, § 211).¹ The jury found the firearm allegation within the meaning of section 12022.53, subdivision (b) to be untrue. The trial court sentenced appellant to the upper term of five years in state prison.

Appellant's conviction was based upon the following facts:

On June 23, 2009, at approximately 11:00 p.m., Mario Benevides was driving home from the bank where he had made a withdrawal at the ATM. He was carrying \$320 cash. He parked on 75th Street and Vermont Avenue, one-half block from his house. As

* BOREN, P. J., DOI TODD, J., ASHMANN-GERST, J.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Benevides walked to his house, appellant approached and told him, “Give me your wallet.” According to Benevides, appellant was holding a semiautomatic handgun. Benevides gave appellant his wallet.

Benevides ran home and told his 18-year-old son what happened, and they went looking for appellant. Benevides saw two policemen and told them he had been robbed, describing the robber. His son had gone in a different direction. The officers asked Benevides to come with them in the police car to look for the robber. A block later Benevides saw his son, who pointed in the direction he had seen appellant go. The officers got out of the car and went in the direction indicated by Benevides’s son. When appellant was apprehended, in his underpants, he had Benevides’s wallet with Benevides’s identification, but no money, inside. Appellant had no gun, and a search by the officers failed to locate one. Benevides never got his \$320 back.

After apprehending appellant, the officers returned to Benevides and showed him the wallet which he identified as his. The officers told him that they had someone in custody who might or might not be the robber. They then showed appellant to Benevides, who identified him as the robber.

As a result of the foregoing incident, the district attorney filed a one count complaint, alleging second degree robbery and personal use of a firearm.

Appellant made a *Pitchess*² motion, seeking discovery of prior acts of misconduct and dishonesty of Officer Kincaid, who questioned appellant after he was apprehended and claimed that appellant admitted the robbery, but denied using a gun. The officer claimed that appellant said that he used his cell phone so as to appear to be a gun. Appellant denied making the statements, participating in any robbery with a gun or by using his cell phone as a gun, admitting that he committed the robbery, and demonstrating to the officer how to make his cell phone appear to be a gun. He told the officer he did not commit the robbery and that he found the wallet. The trial court granted the *Pitchess* motion as to material

² *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

evidencing falsification and fabrication of evidence. At the in camera *Pitchess* hearing, it ordered production to the defense of one item.

Just before trial began, appellant made a *Marsden*³ motion, which was denied.

At the conclusion of the evidence, before the jury was instructed, defense counsel asked for a lesser included firearm instruction; armed in the commission of a crime as a lesser included to the personal use of section 12022. The trial court denied the motion.

We appointed counsel to represent appellant on appeal. After examination of the record, counsel filed an “Opening Brief” in which no issues were raised. On May 26, 2010, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider.

We have examined the entire record, including the in camera *Pitchess* and *Marsden* hearings, and are satisfied that appellant’s attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The order under review is affirmed.

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³ *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).